

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TYNEL STEWARD,

Plaintiff,

vs.

Cause No. 2:13-cv-01073 WJ/GBW

EMERALD CORRECTIONAL
MANAGEMENT, L.C.C.,

Defendant.

ORDER GRANTING DEFENDANTS' MOTION TO STRIKE

THIS MATTER having come before the Court on Defendants' Motion to Strike Plaintiff's Response [sic] (*Doc. 38*) to Defendants' Reply (*Doc. 36*) to Plaintiff's Response to Defendants' Motion to Dismiss Amended Complaint (*Doc. 34*). *Doc. 39*. Having considered the motion and subsequent briefing (*docs. 40, 41*), the motion will be granted.

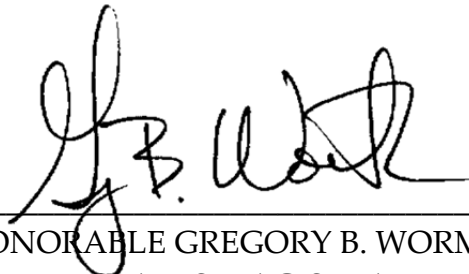
Defendants' motion is based on two theories. They argue that the filing they seek to strike is an improper attempt to amend his Complaint by the late addition of new facts. They also argue that it constitutes an unauthorized surreply.

In support of their first argument, Defendants assert that the pleading is "an attempt to raise a host of factual allegations directed at defeating the Motion to Dismiss and which have not been raised before." *Doc. 39* at 2. Specifically, Defendants point to the three paragraphs entitled "Supporting Facts." *Id.* However, as Plaintiff notes in his response, the "Supporting Facts" seem to duplicate what Plaintiff has raised in his Amended Complaint. *See doc. 10*. Consequently, the Court does not believe the

pleading to be, as argued by Defendants, “an improper attempt to amend his Complaint yet again.” *Doc. 39* at 2.

Defendants’ second argument has more merit. Having reviewed Plaintiff’s contested filing, it is directed at Defendants’ Motion to Dismiss and their Reply. Thus, it constitutes a surreply. The Local Rules require that filing a surreply requires leave of the Court which Plaintiff did not obtain. *See* D.N.M.LR-Civ. 7.4(b). Moreover, given that the filing simply repeats facts and arguments Plaintiff already had the opportunity to present, the Court would not have granted leave had it been requested.

THEREFORE, Defendants’ Motion to Strike Plaintiff’s Response [sic] (*Doc. 38*) to Defendants’ Reply (*Doc. 36*) to Plaintiff’s Response to Defendants’ Motion to Dismiss Amended Complaint (*Doc. 34*) is GRANTED. The Clerk is directed to strike *Doc. 38* from the docket.



HONORABLE GREGORY B. WORMUTH
UNITED STATES MAGISTRATE JUDGE